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Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
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LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]
Protest of Motor Vehicle
Property Tax on 2009 Toyota Corolla

Contact: [REDACTED]

FINAL RULING NO. 2012-02
January 6, 2012

Motor Vehicle Property Tax Assessment
2010 Tax Year (Assessment Date of January 1, 2010)

FINAL RULING

The Kentucky Department of Revenue currently has an outstanding Motor Vehicle Property Ad Valorem Tax ("MOTAX") assessment against [REDACTED] totaling \$ [REDACTED] (plus applicable interest and penalty) for the 2010 tax year. A breakdown of the assessment is shown in the chart below:

Tax Year	Tax Due	Interest As of 01-06-2012	Penalty As of 01-06-2012	Total Due As of 01-06-2012
January 1, 2010	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The Department of Revenue had discovered that the property taxes for the motor vehicle in question had not been assessed or paid for 2010 and accordingly issued [REDACTED] an omitted property tax assessment for the period, in accordance with KRS 132.290

et seq. The penalty of ten percent (10%) and interest as required by KRS 132.290(4) have been assessed as part of this tax liability. The tax, penalty and accruing interest remain unpaid. For the reasons that follow, [REDACTED] was properly assessed property tax for this vehicle.

Liability for ad valorem taxes on a motor vehicle is fixed in accordance with KRS 134.810(4), which states:

When a motor vehicle has been transferred before registration renewal or before taxes due have been paid, the owner pursuant to KRS 186.010(7)(a) and (c) on January 1 of any year shall be liable for the taxes on the motor vehicle...

Under KRS 186.010(7)(a), the owner of a motor vehicle is defined as “a person who holds legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest.”

The assessment in question is presumed to be valid and it is Mr. Fuller’s burden to prove otherwise. Revenue Cabinet v. Gillig, 957 S.W.2d 206 (Ky. 1997); Walter G. Houglan & Sons v. McCracken County Board of Supervisors, 306 Ky. 234, 206 S.W.2d 951 (1947). It is undisputed that [REDACTED] purchased the motor vehicle on December 29, 2009. No evidence has been presented by [REDACTED] that would establish that he did not have physical possession of the vehicle pursuant to a bona fide sale as of the January 1, 2010 assessment date.

[REDACTED] contends the dealership was supposed to pay the property taxes as a condition of the deal. He also feels the length of time it took the Department of Revenue to issue the tax bill ([REDACTED], 2011) from the time he purchased the vehicle was excessive.

The provisions of the property tax law, including the Kentucky Constitution, require that all personal property, which would include motor vehicles, shall be listed for taxation and if for any reason personal property is not listed, then it may be assessed by the Department of Revenue as omitted property. KRS 132.190; 132.220; 132.290; 132.310; 132.320; Ky. Const. §§ 3, 170, 172, 174. The motor vehicle in question was unquestionably not listed for ad valorem taxation for the 2010 tax year and thus has been properly assessed as omitted property.

Therefore, the outstanding MOTAX assessment totaling \$ [REDACTED] (plus applicable interest and penalty) is deemed a legitimate liability of [REDACTED] due the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. Any party appealing a final ruling to the Board other than an individual, such as a corporation, limited liability company, partnership, joint venture, estate or other legal entity, shall be represented by an attorney in all proceedings before the Board, including the filing of the petition of appeal; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET



E. Jeffrey Mosley
Interim Executive Director
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

